Filed 4/13/12 In re M.L. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re M.L., a Person Coming Under the Juvenile Court Law.	
SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Respondent, v. MONIQUE L., Defendant and Appellant.	C067975 (Super. Ct. No. JD231137)

Monique L., mother of the minor, appeals from the judgment of disposition. (Welf. & Inst. Code, §§ 350, 358, 395; statutory references that follow are to the Welfare and Institutions Code.) Appellant contends there was insufficient evidence at the time of the hearing to support the court's jurisdictional findings and the court erred in ordering the minor removed from her custody. We affirm the judgment.

FACTS AND PROCEEDINGS

Appellant, herself a minor, was living in a group home with her first child, who was removed from her care and adjudged a dependent in February 2010 because appellant had a history of leaving her placement without permission and engaging in substance abuse and prostitution. Appellant received reunification services for that child.

This minor was born in November 2010 and was removed from appellant's custody a week later on a protective custody warrant due primarily to the facts which had led to the sibling's removal. Appellant admitted she used drugs in the first eight weeks she was pregnant with the minor and that she had been forced to engage in prostitution during one of the periods she left the group home without permission. At the initial hearing, the court ordered the minor returned to appellant's care in the group home.

The jurisdiction/disposition report included information from appellant's group home case manager who told the social worker that appellant was much improved but was still immature and had difficulty asserting her needs for fear of looking bad. Appellant's permanency worker said she had concerns about appellant's ability to maintain her sobriety despite her recent improvement because appellant had a long history of putting her own needs first. Appellant was participating in all aspects of her reunification plan for the sibling and was in compliance with the plan. Appellant admitted she was a polysubstance

abuser but said she had been clean since June 2010. The minor was adjusting well to placement with appellant, who was anxious about her ability to meet the minor's needs. The social worker concluded the minor was at risk in appellant's custody without intervention due to appellant's history of substance abuse and leaving her placement without permission given that appellant had only a short period of stability. The social worker recognized that appellant was young and often put her own needs first. In the social worker's opinion, appellant's recovery was fragile and she needed to be consistent in the long term to succeed. The social worker recommended that the court sustain the petition and, due to the mother's need for close supervision, recommended appellant continue to reside in the group home with her child and participate in relevant services under a program of dependent supervision.

An addendum filed in January 2011 changed the recommended disposition to removal of the minor with overnight visits. At a home visit, the social worker observed appellant was attentive and affectionate with the minor. However, appellant told the social worker she was confused and frustrated by the minor's needs and behavior and felt anxious when she was unable to stop the minor's crying. The social worker advised her to focus on her program and the minor. Appellant's case manager was present at the visit and reinforced the social worker's advice. Appellant said she was feeling overwhelmed by trying to meet the requirements of her program and the minor's care. Several weeks after the visit, the case manager told the social worker that,

following the visit, appellant had multiple incident reports relating to her behavioral issues and poor parenting. The case manager said appellant complained she was too tired to care for the minor and displayed a general disinterest in child care and working her program but was eager to go on outings with the other group home clients. Appellant continued to express her difficulties in caring for the minor alone. Several incidents occurred in which appellant wanted others to care for the minor so she could engage in other activities. Rather than using staff to assist her, appellant relied on another client who had no parenting knowledge or experience. Appellant told the social worker that, even with staff assistance, she was frustrated and overwhelmed and she never knew having two children as a teen would be so hard. The case worker told the social worker appellant was struggling in all aspects of her program and parenting and was not currently capable of caring for the minor. The social worker recommended removal of the minor with overnight visits because appellant's overall pattern of behavior placed the minor at risk. A second addendum contained copies of the behavioral reports from the group home to support the statements in the first addendum.

In January 2011, the court ordered a first amended petition, which included updated allegations based on the first addendum, to be filed and set a contested hearing on jurisdiction and disposition.

A second addendum was filed in late January 2011 which stated appellant evidently had a medical condition that was

affecting her care of the minor. Appellant's case manager reported appellant was having fainting spells and was taken to the hospital twice. No clinical explanation was found. Appellant said she was unable to care for the minor and agreed to place the minor in respite care when the group home staff directed her to do so to reduce the risk to the minor. The staff and residents noted appellant only displayed symptoms when she was expected to care for the minor or had other responsibilities. However, appellant was able to go on outings with the other residents of the home. The social worker concluded appellant lacked insight into her own actions and her immaturity was crippling her ability to parent the minor. The social worker believed appellant needed time to focus on her own programs and stabilize before she could parent the minor full time.

At the combined jurisdiction/disposition hearing, appellant's counsel argued the mother had been clean and participating in services for several months and, while her past conduct would have placed the minor at risk, her current conduct did not. The court sustained the amended petition and adopted the recommended disposition orders over appellant's objection that clear and convincing evidence did not support a finding the minor was at substantial risk of harm in her care.

DISCUSSION

I

The Jurisdiction Order

Appellant contends substantial evidence does not support the juvenile court's finding that the minor came within the provisions of section 300. She argues that, at the time of the hearing, there was no longer a substantial risk of serious physical harm to the minor. She asserts that her conduct prior to the minor's birth, i.e., leaving the group home and engaging in substance abuse, did not reflect current reality in that she had been clean and remained in placement for seven months prior to the hearing. She further argues that her various violations of rules at the group home did not place the minor at risk of serious physical harm.

When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing, the reviewing court must determine if there is any substantial evidence--that is, evidence which is reasonable, credible and of solid value--to support the conclusion of the trier of fact. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) In making this determination we recognize that all conflicts are to be resolved in favor of the prevailing party and that issues of fact and credibility are questions for the trier of fact. (*In re Jason L.*, *supra*, 222 Cal.App.3d at p. 1214; *In re Steve W.* (1990) 217 Cal.App.3d

10, 16.) The reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

The minor was removed from appellant's custody on a protective custody warrant primarily due to appellant's past behavior. However, at the initial hearing, apparently concluding that there was no current risk, the juvenile court returned the minor to her care. From information in subsequent reports including appellant's statements to the social worker, it became apparent that caring for an infant, going to school and participating in reunification services was more than the young mother could handle even with support and assistance of staff. Appellant began to leave the minor with inexperienced caretakers rather than seek additional assistance from staff and reacted negatively to being told this was inappropriate conduct and that the minor was her responsibility. Eventually, the stress of her responsibilities resulted in physical symptoms which actually interfered with appellant's ability to care for the minor to the point where the group home staff directed her to place the child in respite care. While appellant was not taking drugs or leaving her placement at the time of the jurisdiction hearing, her conduct, including attempts to make inadequate caretakers responsible for the minor so that she could satisfy her own needs, placed the minor at risk of physical harm. Substantial evidence supports the juvenile court's finding that the minor came within the provisions of section 300, subdivisions (b) and (j).

II

The Custody Order

Appellant also argues the juvenile court erred in ordering that the minor be removed from her custody because the evidence did not show there was a substantial danger to the physical health of the minor. Appellant asserts the court was not concerned about the minor's safety, but about appellant being overwhelmed.

To support an order removing a child from parental custody, the court must find clear and convincing evidence "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the parent's . . . physical custody." (§ 361, subd. (c)(1).) The court must also "make a determination as to whether reasonable efforts were made to prevent or eliminate the need for removal of the minor" and "state the facts on which the decision to remove the minor is based." (§ 361, subd. (d).) Failure to state facts justifying removal will be deemed harmless absent a reasonable probability that the factual findings, if made, would be in favor of continued custody. (*In re Jason L.*, *supra*, 222 Cal.App.3d. at p. 1218.)

The court found by clear and convincing evidence there was a substantial danger to the minor if left in appellant's custody, in part, because appellant admitted she was

overwhelmed. According to the evidence, that mental state led appellant to enlist inappropriate caretakers. Further, because she was overwhelmed, appellant was unable to access the help of staff in a reasonable fashion or to involve herself in the programs which would help her learn coping skills and self confidence in her ability to provide appropriate care. Appellant herself recognized her mental and physical state placed the minor at risk of substantial danger while in her care when she agreed to the staff request that she place the minor in respite care.

Substantial evidence supported the court's order removing the minor from appellant's custody. There was no reasonable means of protecting the minor without removal since the group home staff had already tried, unsuccessfully, to provide assistance and a supportive environment which would allow the minor to remain in appellant's care. The findings and orders adopted by the juvenile court are adequate to comply with the statutory requirements. No error appears.

DISPOSITION

The judgment is affirmed

HULL, Acting P. J.

We concur:

ROBIE, J.

MURRAY, J.